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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA BROUGHEL

Plaintiff,

v.

THE BATTERY CONSERVANCY, WARRIE
PRICE, CLAIRE WEIZ AND MARK YOES,
“DBA” WEISZ + YOES

Defendants.

07 Civ. 7755

AFFIDAVIT OF THEODORE BERGER
IN SUPPORT OF PLAINTIFF’S MOTION
FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

THEODORE BERGER, being duly sworn deposes and says:

1. I have been involved in the arts community for nearly thirty-five years. I served as the Executive Director of the *New York Foundation for the Arts (NYFA)* for thirty-three years and “retired” in December, 2005. During this period, NYFA became one of the country’s largest providers of grants and services to individual artists and artist-centered organizations in all disciplines. I am one of the key people in the country focused on supporting artists.

2. I am now continuing my work through a number of major projects: I am the Project Director for the *Urban Artist Initiative / NYC (UAI/NYC)*, a new consortium initiative committed to strengthening information systems for all New York City artists and developing a new grants

program for NYC artists of color (*UAI/NYC* is one of the fourteen city projects of the Creative Communities national network of *LINC (Leveraging Investments in Creativity)*). I am directing *New York Creates*, a new initiative to create more opportunities for New York's craft artists and artisans, with a special concentration on those from immigrant and Diaspora communities. I am serving as a consultant for the development of the *Louisiana Creative Economy Foundation*.

3. I also served numerous cultural and educational boards, panels, and committees. I am a board member of *ArtsConnection*, the *Design Trust for Public Space*, the *CUE Arts Foundation*, the *International Studio and Curatorial Program*, the *Asian American Arts Alliance*, and the *HB Studio*, and also serve on numerous advisory boards.

4. As executive director of an artist service organization, I am always searching for new opportunities to include individual artists in a community design process. It was, therefore, not unusual that in one meeting with Warrie Price, the President of the Battery Conservancy in 2003, that I suggested that the Carousel Project which was being planned by the Battery Conservancy was a perfect opportunity for an artist to participate as a design team member.

5. Artists have a unique contribution to add to a collaborative design team. Their training and sensitivity often enables them to see connections, details and images not normally noticed by architects and others in the design professions.

6. Ms. Price was enthusiastic about the idea after our discussion and retained Jennifer McGregor, a public art consultant, to issue a Call for Artists, develop an orientation package for the finalists, select the panel to choose the artist and orchestrate the selection procedures for the competition.

7. I understood that an artist would be selected to participate on the design team and continue with the project until its completion.

8. I understood that Weisz + Yoes, the architectural firm, had already done preliminary drawings for the exterior of the Carousel and an initial idea for the interior of the Carousel.

Claire Weisz served on the selection committee for the artist.

9. Some time in February or March 2004, the artist finalists submitted their proposals for review to members of the selection committee to which I had been appointed as a member.

10. Barbara Broughel was selected as the artist to receive the commission to participate as the artist member of the design team.

11. Members of the team were impressed with her comprehensive vision for the interior carousel space and the novelty of her ideas and vision, expressed in her proposal, model and presentation to the committee.

12. I have recently reviewed Ms. Broughel's proposal and recall some of her novel and original concepts and ideas which led to her selection.

(i) the concept of translucent forms lighted from within (with fiber-optic lighting which can be pulsed and nuanced in a variety of ways) and a watery-colored floor with lighting in it too.

(ii) the concept of using cinematic elements, and having a dark/light aspect to the environment, where, when the room lights were up (before and after the ride started), the forms would seem more solid, and when dimmed (during the ride), the lighted floor the sea-life forms, the cinematic and other lighted elements would create a more transparent-feeling and luminous underwater world.

(iii) Ms. Broughel also had the concept that at night, when the Carousel was not in service, the forms would be quietly lighted in a dark environment and turn

slowly, attracting people into to the park at night who could enjoy the Carousel as a kind of quiet romantic luminous jewel-box/lantern.


(iv) Ms. Broughel also presented the concept of an enclosure was to protect the outdoor facility at night from vandals... the idea of the round windows on the enclosure was so that people at a distance would see only snippets of the interior, attracting them to come closer for a look in, with windows at heights which would allow both adults and children to look in.

13. When Ms. Broughel was selected by our advisory committee, I understood that she would enter into a contract with the Battery Conservancy and participate as a member of the design team until the completion of the Carousel Project. I was surprised to learn that she had been removed from the team. I do not know Ms. Broughel socially, but know her as a serious artist and a well respected artist. She had at one time a fellowship from the New York Foundation for the Arts.

Dated: March 12, 2008



Sworn to before me this
12 day of March 2008


Notary Public


Theodore Berger